

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

DEMOND D. LILES,	:	CASE NO. 3:17-cv-02232
Petitioner,	:	ORDER
vs.	:	[Resolving Doc. 1, 15]
WARDEN TOM SCHWEITZER,	:	
Respondent.	:	

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

Petitioner Demond D. Liles asks the Court to stay proceedings in his 28 U.S.C. § 2254 habeas case.¹ Liles seeks a stay because “new information favorable to Liles has been uncovered” and an Ohio court is considering his “motion to vacate his conviction and sentence.”²

On February 16, 2021, Magistrate Judge Baughman recommended that this Court grant the stay.³ There are no objections to Judge Baughman’s report and recommendation.

The Federal Magistrates Act requires that a district court conduct a *de novo* review of objected-to portions of a report and recommendation.⁴ If there are no objections, the court may adopt the report and recommendation without review.⁵ The district court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.”⁶

¹ Doc. 15.

² Doc. 16 at 1–2.

³ *Id.* at 6.

⁴ 28 U.S.C. § 636(b)(1).

⁵ *Thomas v. Arn*, 474 U.S. 140, 149 (1985).

⁶ 28 U.S.C. § 636(b)(1).

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The Court agrees with Judge Baughman's conclusions but finds that dismissal without prejudice is preferable in this instance: "The AEDPA does not require a court to hold a habeas corpus petition in abeyance pending the exhaustion of new claims in state court. . . . Therefore, a federal district court does not abuse its discretion in dismissing a federal habeas petition without prejudice, rather than holding it in abeyance, while the petitioner's properly filed application for state post-conviction review is pending."⁷

The Court **PARTIALLY ADOPTS** the report and recommendation.⁸ The Court **ORDERS** Petitioner to file a copy of his motion pending in Ohio Court. The Court **DENIES** Petitioner's requested stay and **DISMISSES** this matter without prejudice to petitioner's right to refile after state court exhaustion. The Court **ORDERS** that Petitioner give this Court notice within 30 days of a final state court decision.

IT IS SO ORDERED.

Dated: March 11, 2021

s/ James S. Gwin
JAMES S. GWIN
UNITED STATES DISTRICT JUDGE

⁷ *Hudson v. Martin*, 68 F. Supp. 2d 798, 800 (E.D. Mich. 1999).

⁸ Judge Baughman recommended: "For the foregoing reasons, I recommend staying further action on the habeas petition of Demond D. Liles until Ohio courts have heard and decided his motion to vacate his conviction, as well as any direct appeals from that decision. Further, I recommend that Liles be ordered to immediately file with this court such motion made to the Ohio court and that the State be ordered to file updates on the proceedings associated with that motion until final resolution as outline above." Doc. 16 at 6. The Court follows some of these recommendations.